

ORIGINAL

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FILED/ACCEPTED

JAN 24 2007

In Re: Matter of

Federal Communications Commission
Office of the Secretary

Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations

MM Docket No. 05-144
RM-11189

(Dalhart and Perryton, TX)

To: The Secretary of the Commission
Attention: The Assistant Chief, Audio Division, Media Bureau

**RESPONSE OF RADIO DALHART
TO
FURTHER COMMENT OF PERRYTON RADIO, INC.**

Radio Dalhart ("Dalhart"), by its attorney, at the request of Commission staff, hereby respectfully submits its response to the "Further Comment" filed by Perryton Radio, Inc. ("Perryton") in this matter on January 12, 2006.¹

¹ Dalhart did not intend to file a response, as it had concluded that none was needed after having reviewed Perryton's "Further Comment" last January. Dalhart also was concerned that a response would needlessly extend the time for a decision in this matter. Unfortunately, over a year has now elapsed since the proper pleading cycle was closed, and so in retrospect that concern turns out to have been superfluous.

In a January 22, 2007 conference call among Commission staff and counsel for Perryton and Dalhart, staff requested Dalhart to file further information limited to two areas: (a) to address the putative evidence submitted by Perryton in an apparent effort to suggest that Dalhart could not afford to pay Perryton's expenses of changing its channel and (b) Dalhart's ability to reimburse Perryton. Consequently, in compliance with the staff's directive, this Response is limited to those two narrow areas, and we have not addressed such other potentially relevant issues as (1) the lack of any case precedent for the staff's request, (2) the untimely manner in which Perryton first brought this matter to the Commission's attention and the lack of any justification therefor, (3) Perryton's failure to meet its threshold burden of demonstrating the materiality or relevance to this proceeding of a claim that an individual had not made three (among many) payments to a non-party over an unrelated matter; and (4) unsuccessful litigation and other background factors that suggest a competitor's improper motive for causing substantial delay in resolving this case.

All parties to the conference call stated their desire that this proceeding be decided without further delay. Consequently, all agreed that the instant response, and any further comment by Perryton, should be limited to the two specific matters of concern identified by Commission staff as noted above, that Dalhart would file its supplement by

In its Further Comment, Perryton provided a June 7, 2005 letter in which an attorney representing Spearhead Broadcasting, Inc. ("Spearhead") had notified Mr. George Chambers that three payments of \$2,270.96 on a promissory note were delinquent. The Further Comment also provided an affidavit of Spearhead's Secretary-Treasurer claiming that the note was still in default and that Mr. Chambers had "refused" to make payment to Spearhead. On that sole basis, Perryton asserted that it had "serious and well-founded doubts as to the financial ability of Radio Dalhart, Mr. Chambers' company, to take on an additional obligation to pay the \$50,000 to \$100,000 that it would likely cost for Perryton Radio to change frequencies."²

Even assuming, for the limited purpose of this Response, that a lapse over a year ago by Mr. Chambers on a personal, private debt to an unrelated party has some bearing on the financial ability of Dalhart to make payments required by a government agency, the Declaration Under Penalty of Perjury of George Chambers that is submitted herewith dispels any concern over this matter. There, Mr. Chambers states that immediately upon receipt of the Spearhead attorney letter of June 7, 2005 – indeed, the very next day – he sent a double payment and believes that all subsequent payments were made and are current. Perryton apparently was satisfied with the further course of payments, as Mr. Chambers received no contrary communication of any kind in the entire period since June 7, 2005. He further notes the principal reason for the temporary

the end of this week, that Perryton would respond (or indicate that it did not intend to respond) the following week, and that a decision would be issued soon thereafter.

² Perryton may be under a misapprehension as to just which of its claimed costs are reimbursable. That, in turn, could significantly impact the magnitude of the financial obligation Perryton anticipates imposing upon Dalhart. Thus, for example, in a declaration submitted with its December 19, 2005 Opposition, Perryton's owner anticipates that she will lose revenue should KEYE-FM have to reduce power while its transmitter is retuned (§ 19). She then questions Dalhart's ability to pay "these" costs and sustain "these" expenditures (§ 23). The Commission has developed standards which limit Perryton's recovery to established categories of expense, and then only to the extent that such expenses are legitimate. See, *Circleville, Ohio*, 8 FCC Rcd 159 (1967). Dalhart is fully prepared to pay these, but not the consequential costs nor, for that matter, such other costs cited in Perryton's declaration or that Perryton may assert in the future, to the extent that they exceed FCC guidelines.

delay in payments and that this cause will not recur. Finally, he states that \$50,000 has already been earmarked for payment to Perryton and that substantial other funds are available as well.

We respectfully submit that the sworn information provided herein alleviates any concern over Perryton's "Further Comment" or Dalhart's ability to pay legitimate reimbursement at the appropriate time and that this case is ripe for decision on the basis of the pleadings of record.

Respectfully submitted,

RADIO DALHART

By: _____


Peter Gutmann
Its Attorney

Womble Carlyle Sandridge & Rice, PLLC

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January 24, 2007

Declaration Under Penalty of Perjury

George Chambers states under penalty of perjury that the following is true and correct to the best of my personal knowledge:

1. I am the president and 100% owner of Radio Dalhart, licensee of station KXIT-FM, Dalhart, Texas.
2. MM Docket No. 05-144 will enable KXIT-FM to improve its service and would require Perryton Radio, Inc. to change the channel of its station KEVE-FM, Perryton, Texas. I fully intend to timely reimburse Perryton Radio for its legitimate expenses consistent with the FCC's reimbursement guidelines for such situations.
3. In opposing our rulemaking, Perryton Radio has questioned our ability to pay the costs it incurs from its involuntary channel change. Perryton Radio has filed with the Commission a June 7, 2005 letter from its attorney demanding payment of three delinquent installments of a promissory note owed to Spearhead Broadcasting, Inc., the former owner of KXDJ, Spearman, TX (of which I am now the individual licensee), together with a declaration from its treasurer claiming that I "refused to cure the default." In fact, the very next day - June 8, 2005 - I sent a check in twice the amount of a monthly payment and a second check on June 20. Since then, on occasion I have paid one month double and omitted the adjacent month (for example, in 2006 I paid twice in January and July but not in February or June). Each monthly payment was in the required amount of \$2,270.96. Since the June 7, 2005 letter I received no further correspondence about the Spearhead note and so I have assumed that since then Spearhead considered my payments to have been fully satisfactory. I also note that the slowdown in payments that led to the June, 2005 letter was due largely to the heavy expenses I had incurred in constructing a new site for my station KXDJ pursuant to a construction permit granted in very late 2003, an obligation that will not recur.
4. I do not anticipate any difficulty paying at the appropriate time the reimbursement to which Perryton Radio is entitled under established Commission guidelines. I have a liquid investment account of approximately \$50,000 earmarked for this. I also have in excess of \$250,000 in two other accounts that are available, should the need arise.

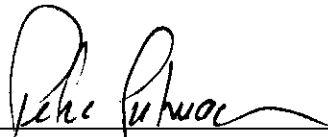

George Chambers

CERTIFICATE OF SERVICE

I, Peter Gutmann, an attorney in the law firm of Womble Carlyle Sandridge & Rice, PLLC, do hereby certify that I have caused copies of the foregoing "Response of Radio Dalhart to Further Comment of Perryton Radio, Inc." to be mailed to the following by first-class United States mail, postage prepaid, on January 24, 2007:

William S. Carnell, Esquire³
Counsel to Perryton Radio, Inc.
715 Hawkins Way
Alexandria, VA 22314

John Karousos, Assistant Chief⁴
Audio Division, Media Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554



Peter Gutmann

³ Served also by email: bill@wcarnell.com.

⁴ A courtesy copy is also being sent to FCC staff: andrew.rhodes@fcc.gov.